

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
KYLE HABEKER,

Plaintiff,

-against-

KFC U.S. PROPERTIES, INC.,

Defendant.

ORDER ADOPTING REPORT
AND RECOMMENDATION

10-cv-4686 (KAM) (VMS)

X

MATSUMOTO, United States District Judge:

On October 13, 2010, plaintiff Kyle Habecker ("plaintiff"), removed this negligence action, pursuant to 28 U.S.C. §§ 1441(d) and 1446(d), against defendant KFC U.S. Properties, Inc. ("defendant"), from New York Supreme Court, Queens County, where it had originally been commenced on August 3, 2010. (ECF No. 1, Notice of Removal filed 10/13/10.) On March 30, 2012, defendant moved for summary judgment on plaintiff's claim arising from an accident that occurred on September 5, 2008, in which plaintiff allegedly twisted his left ankle in a depression in the defendant's parking lot. (ECF No. 25.) Plaintiff filed a response, and defendant subsequently replied. (ECF Nos. 26-27.) Presently before the court is a Report and Recommendation issued by Magistrate Judge Vera M. Scanlon on February 7, 2013, recommending that the court deny defendant's motion for summary judgment in its entirety. (ECF

No. 29, Report and Recommendation dated 2/7/13 ("R&R"), at 12.)

As explicitly noted at the end of Magistrate Judge Scanlon's Report and Recommendation, any objections to the Report and Recommendation were to be filed on or before February 21, 2013. (R&R at 12.) The Report and Recommendation was served upon the parties' counsel via the ECF filing system. (*Id.*) The period for filing objections has expired, and no objections to Magistrate Judge Scanlon's Report and Recommendation have been filed by either party.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a careful review of the Report and Recommendation and the record in this case, and considering that neither party has objected to any of Magistrate Judge Scanlon's thorough and well-reasoned recommendations, the court finds no clear error in the Report and Recommendation and hereby affirms and adopts it as the opinion of the court.

Accordingly, the court orders that defendant's motion for summary judgment is denied in its entirety.

CONCLUSION

For the reasons set forth above, defendant KFC U.S. Properties, Inc.'s motion for summary judgment is denied in its entirety.

The parties are directed to confer regarding setting a date for a settlement conference before Magistrate Judge Scanlon. If settlement efforts are not successful, the parties shall then confer regarding a proposed trial date and a schedule for preparation and submission of civil pretrial materials in accordance with Section V of the undersigned's Individual Practice Rules, available at <https://www.nyed.uscourts.gov/pub/rules/KAM-MLR.pdf>. The parties are further ordered to file via ECF, on or before April 6, 2013, a joint status letter to the court regarding their planned settlement efforts.

SO ORDERED.

Dated: March 6, 2013
Brooklyn, New York

/s/
Kiyo A. Matsumoto
United States District Judge
Eastern District of New York